

IN THE SUPREME COURT OF THE STATE OF MONTANA

ORIGINAL

No. DA 09-0516

STATE OF MONTANA,

Plaintiff and Appellee,

v.

NIEL KELLY MULLARKEY,

Defendant and Appellant.

FILED

DEC 03 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA**MOTION FOR EXTENSION OF TIME  
AND AFFIDAVIT IN SUPPORT**

COMES NOW, Eli M. Parker, counsel of record for Defendant and Appellant, and respectfully requests an extension of time until February 5, 2010, in which to prepare, file, and serve the Appellant's opening brief in the above-entitled matter. In support of this motion, undersigned counsel respectfully submits the following affidavit.

Respectfully submitted this 3<sup>rd</sup> day of December, 2009.

OFFICE OF THE STATE PUBLIC DEFENDER  
Region 2 – Missoula  
610 North Woody  
Missoula, MT 59802

By: *Joselyn Hunt*  
for ELI M. PARKER  
Assistant Public Defender

STATE OF MONTANA            )  
  : ss.

County of Lewis and Clark    )

I, Joslyn Hunt, being first duly sworn upon my oath, depose and state as follows:

1.     I am a licensed, practicing attorney in the State of Montana, and am currently employed by the Office of State Public Defender, Appellate Defender Office, as Chief Appellate Defender.

2.     In my capacity as Chief Appellate Defender, I have assigned Eli M. Parker to handle the above-entitled matter.

3.     The Appellant's opening brief is presently due on December 7, 2009. This is Appellant's first extension request; however, Mr. Parker is requesting longer than the usual 30-day extension for the following reasons.

4.     In December, Mr. Parker has two opening briefs and three lower court briefs due. He also has a sentencing hearing with witness testimony and exhibits scheduled on December 28, 2008. Mr. Parker expects this hearing to require a significant amount of preparation time. Finally, as part of his duties as the Region 2 research attorney and brief writer, Mr. Parker is on call to provide research and brief writing as needed within Region 2 of the State Office of the Public Defender.

5. In order to ensure the most thorough review of Appellant's case file, given his other responsibilities, Mr. Parker is requesting an extension of time of 60 days within which to prepare, file, and serve Appellant's opening brief.

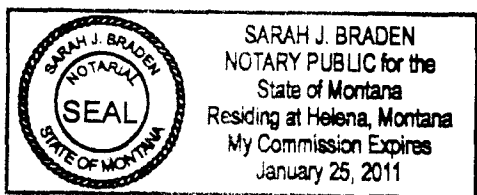
6. Mr. Parker will work diligently to complete the matter in the time requested.

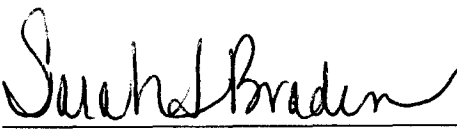
7. Opposing counsel has been contacted concerning this motion and does not object.

8. Further your affiant sayeth naught.

  
\_\_\_\_\_  
Joselyn Hunt

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of December,  
2009.



  
\_\_\_\_\_  
Sarah J. Braden

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing  
Motion for Extension of Time and Affidavit in Support to be mailed to:

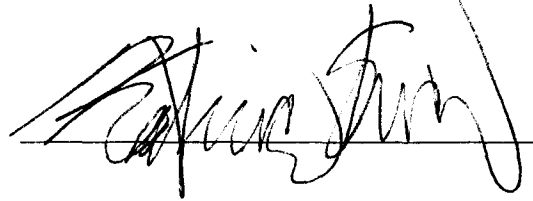
STEVE BULLOCK  
Montana Attorney General  
MARK MATTIOLI  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

LEO J. GALLAGHER  
Lewis and Clark County Attorney  
228 Broadway-Courthouse  
Helena, MT 59601

NIEL MULLARKEY 3002780  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

DATED:

December 3, 2009

A handwritten signature in black ink, appearing to read "Catherine [unclear]", is written over a horizontal line.